HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CR No.: 7 of 2007.
and
CMP No.54 of 2007 in
RSA No. N.209 of 2007.
Reserved on: 22.5.2007
Decided on: 15.6.2007.

CR No.7 of 2007:

Manohar Lal and others ..... Petitioners.

Versus

Hon'ble High Court of H.P. & Another. .....Respondents.

CMP No.54 of 2007 in RSA No. N.209 of 2007.

Manohar Lal and others ..... Appellants.

Versus

Desh Raj Sood and another. .....Respondents.

Coram:

The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting? yes

CR No.7 of 2007:

For the petitioners: Mr.Bhupender Gupta, Senior Advocate, with Mr.Janesh Gupta, Advocate.

For respondent No.1: Mr.Sandeep Kaushik, Advocate.

For respondent No.2: Mr.Ajay Kumar, Advocate.

CMP No.54 of 2007 in RSA No. N.209 of 2007.

For the appellants: Mr.Bhupender Gupta, Senior Advocate, with Mr.Janesh Gupta, Advocate.

For respondent No.1: Mr.Ajay Kumar, Advocate.

For respondent No.2: Mr.Sandeep Kaushik, Advocate.

Whether reporters of local newspapers may be allowed to see the judgment? yes

V.K. Ahuja, J.:

This judgment shall dispose of a revision petition filed by the petitioners Manohar Lal etc. under Section 115 of CPC against the order passed by learned District Judge, Shimla on 22.12.2006, vide which the application filed by the petitioners for leave to file appeal against the judgment and decree, dated 11.10.2006, of the learned Civil Judge (Senior Division), Shimla was dismissed. This judgment shall also dispose of cross objections filed by the petitioners as well as regular second appeal against the judgment and decree passed by the learned District Judge, Shimla, dated 6.1.2007, affirming the judgment and decree passed by the learned Civil Judge (Senior Division), Shimla, dated 11.10.2006.

Briefly stated the facts of the case are that a suit for declaration was filed by Shri Desh Raj Sood as plaintiff alleging that he is working as Deputy Registrar-cum-Special Secretary to Hon'ble the Chief Justice in High Court of Himachal Pradesh and that he was born on 13.7.1950. However, in the matriculation certificate issued in the year 1966, his date of birth was erroneously shown as 5.7.1949 and that date was subsequently recorded in his service book. The plaintiff alleged that he obtained a copy of birth certificate and learnt about the wrong entry about his date of birth being 5.7.1949 though it was 13.7.1950. He made a representation for correction of the entry and thereafter filed a civil suit for correction of the date of birth. The suit was contested by High Court of Himachal Pradesh through its Registrar who was made defendant in the case. The suit for declaration was decreed by

the learned trial court on 11th October, 2006. An appeal was preferred by the High Court of Himachal Pradesh before the District Judge, Shimla, which was admitted for hearing and during the pendency of the appeal, an application under Section 151 CPC was filed by the petitioners Manohar Lal and four others for permission to file the appeal against the judgment and decree of the learned trial court and they also preferred a separate appeal under Section 96 CPC against the judgment and decree of learned trial court. The said application was dismissed by the learned District Judge, vide his order dated 22nd December, 2006, passed in CMA No.443-S/VI of 2006. The petitioners have filed the present revision petition against the order passed by the learned District Judge rejecting their application and they have also filed a regular second appeal against the judgment and decree of the court of learned District Judge alongwith an application under Section 151 CPC for granting them leave to file the appeal.

Notices of both these revision petition and appeal were issued to the original plaintiff and defendant. Regular second appeal has also been filed by the High Court of Himachal Pradesh through its Registrar against the judgment and decree of the court of the learned District Judge. The arguments have been heard only on the civil revision preferred by the petitioners Manohar Lal etc., on the application for leave to appeal as well as regular second appeal filed by the petitioners against the said judgment and decree passed by the court of the learned District Judge. This judgment shall dispose the revision petition as well as application under Section 151 CPC for granting them leave to appeal as well as second appeal preferred by petitioners.

The submissions made by the learned counsel for the petitioners were that the petitioners are Officers of the Registry of High Court of Himachal Pradesh and they are junior to the plaintiff Desh Raj Sood in service and in case the judgment and decree passed by the learned trial court is allowed to remain as such, they would be adversely affected. The plea was opposed by the plaintiff on the ground that the applicants had no locus standi to intervene in the matter and they have no vested right of promotion and the dispute was in between the employer and employee and, therefore, the petitioners had no locus standi to file the application or to file the appeal. The High Court of Himachal Pradesh through its Registrar had neither opposed the application filed by the petitioners, nor had submitted that the application be allowed and had submitted that the application be decided on merits.

The submissions made by the learned counsel for the petitioners were that a post of Additional Registrar will fall vacant in the near future on the retirement of one Shri Inder Singh and since the petitioner No.1 is also working as a Deputy Registry, he would be considered for the said post and in case the plaintiff Shri Desh Raj Sood is granted extension in service by way of decree for declaration in the civil suit filed by him, his chances are likely to be affected and the other petitioners' chances of further promotion as Deputy Registrar will be adversely affected and, therefore, they have substantial interest in the case and they should be allowed to be impleaded as a party and they should also be allowed to file pleadings and make submissions also against the judgment and decree passed by both the courts below in favour of the plaintiff. During the course of arguments, I had specifically put up a question to the learned counsel

for the petitioners to satisfy this Court as to how petitioner No.1 is a necessary party to the suit and as to how other petitioners No.2 to 5 have also substantial interest in the suit filed by the plaintiff. I had also put up a question as to whether the petitioners should be allowed to be heard only in the matter or they have also a right to file the pleadings and contest the case before the courts below. The submissions made by the learned counsel for the petitioners were that the question as to whether the petitioners should only be heard by the court of the learned District Judge or they should be also be permitted to file pleadings or the case deserves to be remanded to the trial court is to be decided by the court of learned District Judge. It was submitted that once the revision petition as well as appeal filed by them is allowed, the court of District Judge will determine the question in regard to filing of the pleadings by the petitioners.

On the other hand, learned counsel for the plaintiff/respondent Desh Raj Sood submitted that the dispute was in between the employer and employee and was being contested by the employer by filing an appeal before the court of learned District Judge as well as before this Court also and petitioners have no substantial interest in the case and, therefore, the revision petition filed by them as well as the appeal preferred by them deserves to be dismissed accordingly.

The facts of the case are not in dispute that the plaintiff filed a suit for correction of birth entry and his employer i.e. High Court of Himachal Pradesh was impleaded as a party who contested the suit before the learned trial court and also filed an appeal before the learned first appellate court as well as before this Court. There are no allegations made in the application filed by the petitioners or in the present revision petition that there was a collusion in

between the plaintiff or his employer or that the case was not being properly contested by the defendant. Once there are no allegations in this regard and the suit is being contested by the defendant, who had also preferred an appeal before the District Judge as well as before this Court, it cannot be said that the petitioners have a substantial interest since in my opinion, their interest was being watched by their Department, who was hotly contesting the suit filed by the plaintiff. Moreover, the main issue raised by the petitioners is that the post of an Additional Registrar will fall vacant and petitioner No.1 Manohar Lal was to be considered against this post and once the plaintiff succeeds in the case and his date of birth is changed, he will also be considered against the said post alongwith petitioner No.1. Other petitioners have no substantial interest except that once the post of Deputy Registrar falls vacant on retirement of the plaintiff or on promotion of petitioner No.1 Manohar Lal Sharma, Deputy Registry, as Additional Registrar, a post of Deputy Registrar will fall vacant and petitioners No.2 to 5 will be eligible to be considered against that post. Applying the analogy that one post will fall vacant and there will be corresponding vacancies in the lower cadre, it cannot be said that an official even upto the lower rank, say in the clerical cadre or assistant cadre or Superintendent, can also claim to be impleaded as a party in the suit filed by an employee for the correction of entry which suit has been filed against the employer. In my view, petitioner No.1 has substantial interest who was likely to be affected by the decision of the civil suit and who could be said to be a person having a substantial interest. However, viewed with that limited angle that he had a substantial interest to be considered for the post of Additional Registrar, it cannot be said that an

employee has a right to be promoted and he does not stand a chance to lose by the decision in a civil suit and the only thing is that he has got one more contender for the senior post to which he was eligible because of seniority and he has another contender since the date of birth corrected of another employee of equivalent rank who will also become eligible to be considered for the higher post i.e. of Additional Registrar and nothing more than that. An employee has a right to be considered for promotion which right was not being denied to petitioner No.1 Manohar Lal, but he will have another contender at the time of promotion and that does not give right to him to be impleaded as a party to this suit and once the application filed by the petitioners is allowed, they will have an interest to file pleadings also and once they are permitted to file pleadings, it will amount to re-opening of case before the learned trial court. Even if they are permitted only for limited purpose to contest the appeal, once their case is being duly contested by their employer before this court and was also contested before the first appellate court, it cannot be said that their interest was not being watched by their employer and as such they had a substantial right to be heard or to file pleadings as the case may be.

In view of the above discussion, I accordingly hold that the order passed by the learned District Judge disallowing the application filed by the petitioners for being impleaded as a party does not suffer from any illegality and those findings are liable to be affirmed and, therefore, the revision petition filed by the petitioners is liable to be dismissed, which is dismissed accordingly.

In so far the leave to appeal filed by the petitioners is concerned, in view of my findings in the revision petition, I am of the opinion that they have

no right to file appeal separately and as such the appeal filed by the petitioners is accordingly dismissed. Copy of the judgment be placed on record of civil appeal. It is clarified that no observations are made in this order which shall have any affect on the merits of the appeal preferred by the High Court of Himachal Pradesh against the judgment and decree of learned District Judge, which shall be independently heard.

CMP No.33 of 2007 in CR No.7 of 2007:

In view of the final disposal of the Civil Revision, this application is also disposed of.

June 15, 2007 (trs) **(V.K. Ahuja), J.**